IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

WP(C).No. 903 of 2007(G)

PETITIONER:

K.K.MAMMUTTY, MEMBER,
BOARD OF DIRECTORS, PADINJARATHARA SERVICE CO-OPERATIVE BANK LIMITED, PADINJARATHARA, WAYANAD DISTRICT, RESIDING AT KOITHIKANDY, VARAMPATTA P.O., WAYANAD DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), WAYANAD, KALPETTA.

2. THE PADINJARATHARA SERVICE CO-OPERATIVE BANK LIMITED, PADINJARATHARA, WAYANAD DISTRICT REPRESENTED BY ITS SECRETARY.

BY GOVERNMENT PLEADER SRI. P.N. SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

W.P.(C). 903/2007

Dated this the 9th day of January, 2007

JUDGMENT

The grievance of the writ petitioner is that Ext.P1 notice had been issued under Rule 44(3) of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules', and an order is proposed to be passed without hearing him, as contemplated under Rule 44(3) of the Rules.

2. The counsel for the writ petitioner submits that Ext.P1 notice had been issued on 21.12.2006. The hearing was posted on 28.12.2006 at 11.00 a.m. The receipt of Ext.P1 notice, by the writ petitioner, was after the time fixed for hearing on 28.12.2006. The counsel, therefore, submits that the non-compliance of the provision under Rule 44(3) of the Rules, would cause difficulties not only to the Board of Directors, but also to the writ petitioner, Co-operative bank, as well.

3. I heard the arguments advanced by the learned

Senior Government Pleader. As per the provisions under Rule 44(3) of the Rules, before passing an order, the Registrar shall give an opportunity to that person to state his objections, if any, against the proposed action and, if the person wishes to be heard, he shall be given an opportunity to be heard, which is mandatory in nature. Natural justice demands the same as well. Notice had been received by the writ petitioner, as averred in the writ petition, after the time fixed for hearing.

4. Therefore, without entering into any discussion on the merit of the matter, I set aside Ext.P1 notice dated 21.12.2006, and direct the first respondent, the Joint Registrar, to give an opportunity to the writ petitioner to file his objections and he shall also be heard before passing an order, as contemplated under Rule 44(3) of the Rules.

5. The learned Government Pleader, however, expresses his fear that, if an order is passed, the matter would become infructuous. But it is necessary to ensure

that the natural justice is followed and the mandatory provision is complied with. Hence, I direct the Joint Registrar to pass an order as required and the order shall not be implemented, otherwise than as per the provisions of the Kerala Co-operative Societies Act and Rules.

The writ petition is disposed of as above.

J.M.JAMES
JUDGE

mrcs